

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL CASE NO. 1:12cv71**

<b>BOYD CLINTON THOMAS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>ORDER OF REMAND</b>
	)	
<b>MICHAEL J. ASTRUE,</b>	)	
<b>Commissioner of Social Security,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the Court on the Plaintiff's Motion for Summary Judgment [Doc. 10] and the Defendant's Consented-To Motion for Reversal and Remand pursuant to Sentence Four of 42 U.S.C. Section 405(g) [Doc. 12].

Sentence Four of 42 U.S.C. §405(g) provides, in pertinent part, that "[t]he court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing." The parties here have moved for reversal of the decision of the Defendant and for remand for further administrative proceedings. Specifically,

the parties seek remand for re-evaluation as well as the consideration of additional evidence.

Upon remand to the Commissioner, the Appeals Council shall instruct the administrative law judge (ALJ) to: (1) address the Plaintiff's alleged need to change his ostomy bag frequently; (2) re-assess the Plaintiff's residual functional capacity; and (3) take additional vocational expert testimony. In addition, the Appeals Council shall consider the subsequent allowance from June 1, 2012 in accordance with HALLEX<sup>1</sup> I-4-4-101 and I-5-3-17. The Court finds remand is appropriate. Melkonyan v. Sullivan, 501 U.S. 89, 111 S.Ct. 2157, 115 L.Ed.2d 78 (1991).

## **ORDER**

**IT IS, THEREFORE, ORDERED** that the Plaintiff's Motion for Summary Judgment [Doc. 10] is hereby **DENIED** as moot.

**IT IS FURTHER ORDERED** that and the Defendant's Consented-To Motion for Reversal and Remand pursuant to Sentence Four of 42 U.S.C. Section 405(g) [Doc. 12] is hereby **GRANTED**.

**IT IS FURTHER ORDERED** that the decision of the Commissioner of Social Security is hereby **REVERSED** and the case is hereby **REMANDED**.

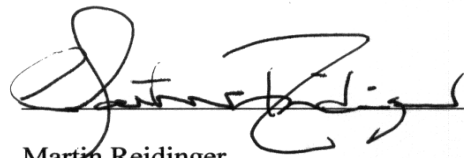
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<sup>1</sup>This is the acronym for the Social Security Administration Office of Hearings and Appeals Litigation Law Manual. Smith v. Astrue, 2012 WL 1313243 n.1 (W.D.N.C. 2012).

**IT IS FURTHER ORDERED** that upon remand, the Commissioner shall comply with the directives contained within this Order.

The Clerk of Court shall enter separate Judgment of Remand simultaneously herewith. The Clerk of Court is notified that this is a final judgment closing the case.

Signed: October 26, 2012

  
Martin Reidinger  
United States District Judge

